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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

00100.01.0038

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Typed or printed name William J. Voller III

Application Number

09/804,910

Filed

March 13, 2001

First Named Inventor

Ivan Wong Yin Yang et al.

Art Unit

2623

Examiner

Michael P. Van Handel

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

m

/Christopher J. Reckamp/

Signature

☐

assignee of record of the entire interest.

Christopher J. Reckamp

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

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May 16, 2008

Date

Registration number if acting under 37 CFR 1.34 _____

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Ivan Wong Yin Yang et al.	Examiner:	Michael P. Van Handel
Serial No.:	09/804,910	Art Unit:	2623
Filing Date:	March 13, 2001	Docket No.:	00100.01.0038
Conf. No.:	2786		

Title: **METHOD AND SYSTEM FOR INTEGRATING RECORDED MATERIAL
WITH ELECTRONIC PROGRAMMING GUIDE**

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REMARKS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

Applicants respectfully submit that the Examiner's rejections include clear errors because they ignore claim language and because the cited publication does not teach what is alleged. Claims 6-10, 15-22, 24, 26, 28-31, 36, 38-39 and 41 stand rejected under 35 U.S.C. § 102(e) as being anticipated by US Publication No. 2003/0149988 to Ellis et al. ("Ellis").

Independent claim 6 requires, among other features, an "extended electronic program guide [that] is organized as a grid of entries, each of the entries including the information related to at least one of: the current live stream and the future live stream and wherein at least one entry indicates presence of existent recorded material associated with the information related to the at least one of: the current live stream and the future live stream, when available." (Emphasis added). The current Office action rejection as to claim 6 constitutes clear error for at least the reason that it ignores the emphasized claim limitations printed above. Additionally, the reference to Ellis is in clear error because Ellis does not teach at least the above-emphasized claim language.

Addressing Applicants' response filed April 4, 2007, the Office action initially alleges that the above claim limitation does not require, among other things, "an entry [of the grid of entries] that is capable of indicating both [information related to] current or future live streams and [presence of] existent recorded material". Applicants respectfully disagree and notes that by construing the claim in this manner, the rejection constitutes clear error.

Applicants submit that the face of claim 6 requires, among other things, an extended electronic program guide organized as a grid of entries. Each of the entries include information related to at least one of the current live stream and the future live stream. And, at least one entry indicates the presence of existent recorded material associated with the information related to the at least one of the current live stream and the future live stream. To construe the claim feature in any other way than to require that each entry of the grid includes information related to at least one of a current and future live stream and wherein at least one entry of the grid indicates the presence of existent recorded material ignores and fails to give meaning to the claim phrase "each of the entries". For this reason alone the rejection constitutes clear error.

However, the current Office action further provides at least two alternative bases for rejections. The first alternative basis cites page 11, paragraph 125; and FIG. 11a of Ellis and icon 299 as teaching the claim features emphasized above. (Office action, p. 4). According to the Examiner, the "I Love Lucy" listing "indicates that the listed program is a pending selection scheduled for recording [and that] when icon 299 is displayed [] the icon would indicate to the user that a portion of the program has been recorded." (Office action, p. 4). Initially, Applicants note that the Office action has no basis for its premise that, after a recording has been made, icon 299 would indicate to the user that a portion of the program has been recorded. Ellis merely teaches that "[t]he listing has icon 299 that indicates the listing is for a program that is to be

recording.” Neither Ellis nor the current Office action appear to provide an explanation for the premise that icon 299 also indicates, after a recording, that a program has been recorded. Moreover, Applicants note that FIG. 11a does not show the above-emphasized claim feature where (1) each entry of a grid of entries includes information relating to at least one of the current live stream and the future live stream and (2) and where at least one entry of the grid indicates the presence of existent recorded material At best FIG. 11a, shows a grid of “n” entries where “n” entries indicates current or live programs and where one of the “n” entries should be recorded in the future (via icon 299). Because this first alternate basis for rejection ignores claim language and because Ellis does not teach what is alleged, the rejection constitutes clear error.

The second alternative basis cites page 12, paragraph 137; Fig. 14e; page 18, paragraph 187; Fig. 26; and Fig. 11a as teaching the above-emphasized claim feature. (Office action, pp. 4-5). Page 12, paragraph 137 and Fig. 14e teach the use of an overlay “that the program guide display when, for example, a user selects a program that is part of a program grouping” and may “prompt the user to confirm whether the user wishes to record all programs in the grouping.” (¶ 137). Page 18, paragraph 187 and FIG. 26 teach that “when the user selects or designates a program for recording, the program guide generates a record request (step 2620) [and that w]hen a user indicates a desire to record a program grouping, the request may include a grouping identifier or the program identifiers of the constituent programs.” (¶ 187). Finally, FIG. 11a (discussed above with respect to the first alternate basis for rejection) shows that an icon 299 may be used in a program listing to show that the program has been selected for future recording. In summary, no combination of the above portions of Ellis teach or suggest the emphasized claim feature whereunder (1) each entry of a grid of entries includes information relating to at

least one of the current live stream and the future live stream and (2) and where at least one entry of the grid indicates the presence of existent recorded material Therefore, the second alternate basis for rejection constitutes clear error because it ignores claim language and because Ellis does not teach what is alleged.

The Office action further cites to Figures 11b and 11c and element 151 as teaching the above-emphasized claim features in what appears to be a third alternate basis for rejection. (Office action, p. 6). Applicants submit, however, that “FIG. 11b shows, for example a comedy program listing for a recorded copy of the comedy “Saturday Night Live” that is a separate entry in the grid of entries than any current or future entries. (§ 125). To the extent that, and solely for purpose of argument, element 151 (i.e., the listing for “Mad About You”) constitutes recorded material, the entry is again a separate entry in the grid of entries than any entries for current or future listings. “FIG. 11c shows, for example, a movie listing for a recorded copy of the movie ‘Perfect Body’” that is a separate entry in the grid of entries than any current or future entries. (*Id.*). FIGs. 11b and 11c, like FIG. 11a, “show listings for recorded programs and programs scheduled for recording as having a slightly different listing display format than the listings for regular programs.” (§ 126; Emphasis added). Presumably, regular programs are the current and future programs. In other words, FIGs. 11b and 11c fail to teach or suggest the emphasized claim feature whereunder (1) each entry of a grid of entries includes information relating to at least one of the current live stream and the future live stream and (2) and where at least one entry of the grid indicates the presence of existent recorded material Again, the third alternate basis for rejection constitutes clear error because it ignores claim language and because Ellis does not teach what is alleged.

Each of independent claims 16, 19, 22, 24, 26, 36 and 39 contain the same or similar language as claim 6 and the rejections are the same or similar as the rejection to claim 6. Thus, for the same reasons as articulated above, the rejections to claims 16, 19, 22, 24, 26, 36 and 39 constitute clear error. The rejections to each dependent claim also contains clear error at least to the extent that each such dependent claim incorporates the limitations of the aforementioned independent claims.

Respectfully submitted,

Date: May 16, 2008

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